Supreme Court, U.S.
FILED
JUL 3 1985
JOSEPH F. SPANIOL, JR.
CLERK

Case No. 85-189

SUPREME COURT OF THE UNITED STATES

ANNUAL TERM BEGUN AND HELD OCTOBER 1984

TITLE:

THE PEOPLE OF THE STATE OF ILLINOIS
Plaintiff-Appellee
vs
ROBERT E. NORTON
Defendant-Appellant

On Appeal from the Supreme Court, State of Illinois, Springfield

No. 61248

JURISDICTIONAL STATEMENT

Also, bound herein:

MOTION TO ACCEPT JURISDICTIONAL STATEMENT FOR FILING INSTANTER

For appellant:
Robert E. Norton (Acting *pro se*)
407 Fairlane
Pekin, IL 61554
Tel. No. (AC 309) 346-9518

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JURISDICTIONAL STATEMENT

I. The following questions are presented by this appeal:

A. The basic question that has not yet been addressed in its entirety thus far in the present cause is that of fundamental and inalienable retained rights guaranteed the people under the United States Constitution in its Bill of Rights, in this instance under the provisions *conjunctively (and there is one of the key points)* of the First and Ninth Amendments, along with the provisions of the Tenth Amendment in its strengthening and giving fuller import to those of the Ninth. (Those three Bill of Rights Amendments to the United States Constitution just referred to, as part of the fundamental laws of the land and, as such, sufficient unto themselves as applicable to the present cause, are the *only laws of the land* that have any bearing at all in *supporting the basic position in presentations for the appeal by the defendant-appellant* in the present instance; and this is as further detailed in Illinois Third District Appellate Court at length in, primarily, Section II of the very important and integrated portion of the Brief in Appeal subtitled "Statement on Behalf of Defendant" as further clarified in the appellant's Reply Brief & Argument.)

Those three Bill of Rights Amendments here referred to, relative to their being the sole support in the appeal of this cause, have been shown to be the key elements there in connection with this constitutional question being presented which relates to the acceptance by a person or persons of the optional practice of simple nudity in common — whether in a "private" or a so-called "public" sphere — within the framework and as an integral part of a people's right relative to personal worship, and which gains support from an adherence by the person or persons to the fundamental concepts embodied in the Judaeo-Christian heritage as represented in the Old and New Testaments, in which there is no specifying any proscription to the optional practice of mere nudity in common regardless of the sphere of that practice. In this connection with the people's right, in such a framework, to that optional practice of simple nudity (by those who claim the right), we are brought to the question under the United States Constitution that has not yet been satisfactorily addressed in its entirety in the present cause and which has bearing there on one of the main keys to the issue as very specifically presented by the appellant relative to this rightful practice coming under the *protection of inalienable retained rights of the people GUARANTEED UNDER CONJUNCTIVE PROVISIONS* of the Ninth Amendment together with the freedom of worship provisions of the First Amendment.

B. The failure to acknowledge, in the review by the Illinois Appellate Court, that the appellant's Case from the inception of its appeal has been based on both Article I and Article IX arguments conjunctively, contributes further in retaining the question: Has it not apparently been intentionally ignored over and again that there have been statutes interpreted and promulgated, under the pretext of providing protection for the health or welfare for society as a whole, which are none the less in conflict with the Ninth Amendment thus attempting to abrogate rights of the people?

C. Assuming that law enforcement officers investigating an alleged incident occurring at approximately 9 P.M. on Aug. 28, 1983, involving the accused (appellant herein), this in response to a "Call 44" reporting lewd and lascivious behavior, the question immediately arises of whether or not there

in fact is involved any such occurrence that in truth could come under that purported heading of lewd and lascivious behavior. Any complainant in this connection should be able to specify to the investigating officers the exact nature of the lewd and lascivious behavior and what that behavior actually consists of that unquestionably makes it properly come under such a description. (Should the officers upon further investigation at the behest of the complainant find nothing to substantiate the report but instead find, for example, only an individual who is or has been engaged in routine yard maintenance and who is either scantily clad or even completely devoid of wearing apparel due either to the extremely hot or to the unseasonably warm weather and the simple nature of the work being performed, in that instance is there not then nothing for the officers to do but to reject the alleged complaint because of insufficient grounds for it and at the same time to notify the complainant accordingly with a warning also that complaints of this nature should not be made unless there are more specific and concete facts that the complainant presents which can with little doubt back up the alleged nature of the accusations in those complaints?)

In keeping with United States Supreme Court findings in the late 1950's against the Post Office Department to the effect that mere nudity of itself does not thereby constitute anything at all of a lascivious nature — or in other words that "nude is not lewd" — is it not plainly evident that reports of instances of simple nudity in common thus can not be used with that simple nudity of itself as a valid basis for a complaint against "lewd and lascivious behavior"? It would also be plainly evident, would it not, that in any application of a statute such as the Illinois disorderly conduct statute in instances where simple nudity is wrongfully interpreted as representing lewd and lascivious behavior and this simple nudity wrongfully used of itself as sufficient grounds for the application of that statute, an immediate question arises of whether or not such interpretation properly supports lawful application of the statute: In those instances would not that application thus become repugnant to the Constitution of the United States and therefore invalid in that such application thereby attempts to abrogate the people's rights guaranteed by the United States Constitution under the provisions — as the appellant has persisted in main-

taining in these causes — of the First Amendment *in conjunction* with the Ninth Amendment therein, to the practice of simple nudity? (For primary details of appellant's persistence thus, reference need only be made just to subparagraph A here of this section I.)

(Again with this more specific regard to the optional practice of simple nudity in common, the accused would like to point out that he is resolutely continuing in his persistence that there is constitutional basis, founded under the freedom of worship provisions of the First Amendment *in conjunction* with the Ninth Amendment in the Bill of Rights of the United States Constitution, that guarantees the people their inalienable retained right to that practice for any and all who so claim that right.)

D. There is a question which may in some way appear subsidiary to the foregoing one, yet it is of such critical nature as to here require its special emphasis, namely, the dubious departure in this Case from this country's traditional procedures and historic safeguards against abrogation of individual rights, including the right in all criminal procedures to receive the benefit of any reasonable doubt. In this connection, aside from the fact that the mere appearance, completely nude, of the accused (concerning which fact, of course, there has been no denial whatever) in an alleged incident is the sole basis expressed on behalf of the plaintiff to proceed with action against the accused, the appellant in his presentations has pointed to questionable action on the part of the plaintiff in presenting testimony for the prosecution, although not openly alleging, that nevertheless indirectly attempts to show only through improper subtle inferences that the accused was also engaged in further "objectionable" conduct at the time of the incident; such questionable directing of the case by the prosecution indicates that unacceptable attempts thus to assign through subterfuge additional guilt to the accused, which was neither included in the initial charges nor born out during the trial proceedings in any way, unlawfully represent an undermining of the basic protections under the Bill of Rights against false or misdirected accusations and a circumventing by device of that protection in the present cause to the accused, under which basic protection *guilt as a result of accusation*

alone can thereby never be established. In addition to postulating further aspects in this connection, the appellant has shown that the intent of the varied arguments in the appeal has for one of its main purposes to show the thorough and unquestionable inadequacy for any relevancy here of the unacceptable attempts at further but misdirected accusations, those attempts included in the *wrongfully implied interpretation of the alleged objector,* the only witness during the trial, which was offered *in his testimony with inexplicit statements, vaguely contrived thus pointing to nothing of real substance* with respect here to its effective pertinence and lawful import in this Case.

In summary of this point, it is strongly felt that here the questions definitely arise whether undue influence was at all events given during the trial proceedings to this questionably directed prosecution of the case by the plaintiff regarding that aspect, and as to a further improper result of that undue influence whereby the findings of the trial court do not at all represent due consideration having been given the defendant-appellant with regard to the point here being emphasized — his right to receive the benefit of any reasonable doubt, as that right pertains here to the foregoing aspect in the matter at bar. (More particular details referring to the aspect of unjust accusations will permit at times an additional postulating with regard to whether or not a basic Bill of Rights protection — wherein there are guarantees against wrongful assignment of guilt as a result of accusation alone — is always acknowledged and correctly observed: If one assumes that wrongfully the findings of the trial court in this instance were in all probability based there for the main part on the aspect here being discussed, although the attempt through cleverly deliberate though actually insufficient and faulty presentations on behalf of the prosecution to assign additional but misdirected guilt to the accused *was not at all substantiated during the trial by any proof or evidence whatever,* then the guilt of the accused in those proceedings was *wrongfully established as a result of accusation alone, thereby violative of the protection required to be accorded through the basic principles of our Bill of Rights.)*

E. "Naturism", as defined at 4 & 5 in "Statement on Behalf of Defendant" portion of appellant's Brief in Appeal, includes the optional practice of complete nudity in common, and the question is raised regarding that practice of simple nudity being more basic than whatever may be attributed to it by the mere "philosophy" of any single individual; and rather on the other hand, being a matter directly involved with the people's inalienable rights as conceived by the founding fathers of a great land of freedom, such unconstrained practice of simple nudity not in any manner posing a problem to order in any of the aspects of organized society.

II. Following is a list of all parties, both to the proceeding in the Illinois Appellate Court, Third District at Ottawa, and to the action taken in the Illinois Supreme Court at Springfield, the review of whose final decree is being sought:

For appellee:

State's Attorney Bruce W. Black
Tazewell County
Pekin, IL

State's Attorneys Appellate Service Commission
c/o Deputy Director John X. Breslin
Third District Office
Ottawa, IL

For appellant:

Robert E. Norton (acting *pro se*)
Pekin, IL

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1. There are no official or unofficial reports of opinions delivered below.

2. Grounds on which the jurisdiction of the Supreme Court of the United States is invoked:

a. On appeal from the Supreme Court, State of Illinois, Springfield, No. 61248.

b. Review is sought of the final decree entered April 2, 1985, in the Illinois Supreme Court at Springfield. The "Notice of Appeal to the Supreme Court of the United States" was filed April 16, 1985, in the Supreme Court, State of Illinois, Springfield, with copy also filed same date in the Appellate Court of Illinois, Third District at Ottawa.

c. The following statutory provisions serve to confer jurisdiction of this appeal on the Supreme Court of the United States: 28 U.S.C. 1257(2) (State courts; appeal)

3. The Case involves the following provisions:

a. First Amendment to the Constitution of the United States. "Article I. Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for redress of grievances."

b. Ninth Amendment to the Constitution of the United States. "Article IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

c. Tenth Amendment to the Constitution of the United States. "Article X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Illinois Revised Statutes, Chapter 38, Section 26-1(a)(1). "26-1 Elements of the Offense. (a) A person commits disorderly conduct when he knowingly: (1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke breach of the peace"

4. The appellant was charged by information with the offense of Disorderly Conduct in that, it was alleged, he knowingly walked in front of his residence in such an unreasonable manner as to alarm and disturb Stephen Gardner and provoke

a breach of the peace, in that he dressed only with a straw hat on his head, in violation of Illinois Revised Statutes, Chapter 38, Section 26-1(a)(1). The basic question as detailed initially in paragraph I-A of this Jurisdictional Statement is that of fundamental and inalienable retained rights guaranteed the people by our Bill of Rights. In presenting the basic question in the Appellate Court of Illinois, Third District at Ottawa, the matter of these fundamental rights was just as clearly outlined — being maintained at 2 in Section A of Brief in Appeal and especially further detailed at length in "Statement on Behalf of Defendant" included as integral part of appellant's Brief in Appeal; also as already pointed out initially in paragraphs I-A and I-B of this Jurisdictional Statement, the review by the appellate court did not address in its entirety this basic question — failing even to acknowledge that the appellant's Case in its appeal has been based on both Article I and Article IX arguments *conjunctively*. (This latter fact is equally true with regard to this appellant's appeal of prior case — 3rd Dist., 1982, Dkt. No 81-483 — wherein the review in that instance by the appellate court also failed to address in its entirety this same basic question, presented by the appellant in identical fashion in both appeals.) The balance of the questions raised in this Jurisdictional Statement were here being presented to support what the appellant contends reflect, in the appellate court's review, the apparent echoing by that honorable court of the arguments of the appellee, with the result that the court thus avoided addressing in its entirety the basic question raised herein by the appellant.

5. The legal authorities cannot rightfully accept a complaint from any person or persons purportedly exercising the right for redress of grievances under the First Amendment to the United States Constitution, using as a basis for filing the complaint any law, ordinance or statute including the Illinois Revised Statute cited in the present cause, if the alleged complaint is making objections to matters that represent adherence within the compass of the purported violator's guaranteed rights; in such instances there is no constitutional validity for any and all of those complaints making such objections. Only honest interpretations of the foregoing statement in any given instance, in contrast to outright sham uses of such a statement

in order to cover up unquestionably illicit activities, can at all events determine the one reason why the questions presented herein are so substantial that, upon ultimately being addressed in their entirety and thereby receiving their full due import which thus far has been lacking, they must require plenary consideration. It is prayed that such consideration given to briefs in the Case submitted on the merits may result in the resolution of various questions of basic and urgent importance in connection with guaranteed rights of the people.

Robert E. Norton, Appellant
(Acting *pro se*)

APPENDIX

1. See number 3 of this Appendix concerning copy of decree appealed from. (There are no opinions, orders, findings of fact, or conclusions of law delivered in the Case in connection with the final decree of the Illinois Supreme Court, the court whose decision is sought to be reviewed.)

2. The following is copy of order entered Nov. 30, 1984, with the decree rendered in this Case by the Appellate Court of Illinois, Third District at Ottawa:

3-84-0248

At a term of the Appellate Court, begun and held at Ottawa, on the 1st Day of January in the year of our Lord one thousand nine hundred and eighty-four, within and for the Third District of Illinois:

Present —

HONORABLE JAY J. ALLOY, Presiding Justice

HONORABLE JAMES D. HEIPLE, Justice

HONORABLE ALBERT SCOTT, Justice

HONORABLE TOBIAS BARRY, Justice

HONORABLE ALLAN L. STOUDER, Justice

JOSEPH FENNESSEY, Clerk

BE IT REMEMBERED, that afterwards on November 30, 1984 the Order of the Court was filed in the Clerk's Office of said Court, in the words and figures following viz:

No. 3-84-0248

In The

APPELLATE COURT OF ILLINOIS

Third District

A.D., 1984

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

vs.

ROBERT NORTON,

Defendant-Appellant.

Appeal from the Circuit Court of Tazewell County

Honorable William H. Young Presiding Judge

PER CURIAM ORDER "Not To Be Published"

The defendant, Robert E. Norton, was convicted of disorderly conduct. The instant charges were brought after the defendant was observed to be standing outside his home completely nude at approximately 9 p.m. on August 28, 1983.

The defendant appeals his conviction *pro se,*, arguing that the disorderly conduct statute is unconstitutional on the present facts as violative of the first and ninth amendments to the United States Constitution. Specifically, the defendant asserts that the statute infringes upon his constitutionally guaranteed right to practice naturism and its concomitant practice of public nudity.

The First Amendment to the Constitution of the United States provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *." The First Amendment is made applicable to the states by the Fourteenth Amendment. *Cantwell v. Connecticut* (1940), 310 U.S. 296, 84 L. Ed. 213, 60 S. Ct. 900.

The First Amendment extends protection to the exercise of religion. This court has previously determined that the defendant's practice of naturism does not constitute the exercise of a religion within the meaning of the First Amendment. *(People v. Norton* (3rd Dist., 1982) Dkt. No. 81-483). After reconsideration, we find no basis for altering our prior finding.

Additionally, the defendant has presented no law establishing that his conduct is in any way protected under the Ninth Amendment.

Accordingly, the judgment of the circuit court of Tazewell County is affirmed.

AFFIRMED.

STATE OF ILLINOIS,
APPELLATE COURT, ss.
THIRD DISTRICT,

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete copy of the opinion of the said Appellate Courty in the above-entitled cause, now of record in this office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Apellate Court, at Ottawa, this 30th day of November in the year of our Lord one thousand nine hundred and eighty four.

/s/ Joseph Fennessey

Clerk of the Appellate Court

3. In connection with the final decree appealed from, in the decision of the Illinois Supreme Court entered April 2, 1985, the following is copy of letter of notification from that agency relative to that decree:

61248.

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035
April 2, 1985

Mr. Robert E. Norton
407 Fairlane
Pekin, IL 61554

No. 61248 — People State of Illinois, respondent, v. Robert E. Norton, petitioner. Leave to appeal, Appellate Court, Third District.

The Supreme Court today DENIED the petition for leave to appeal as a matter of right in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 23, 1985.

4. The following is a copy of "Notice of Appeal to the Supreme Court of the United States" filed April 16, 1985 (transmitted on that date by the appellant via U.S. Mail, postage prepaid, accompanied by Proof of Service), in the Supreme Court, State of Illinois at Springfield, with copy also filed in the same manner on that same date in the Appellate Court of Illinois, Third District at Ottawa:

Illinois Supreme Court Number 61248
SUPREME COURT, STATE OF ILLINOIS
SPRINGFIELD

TITLE:

THE PEOPLE OF THE STATE OF ILLINOIS
Plaintiff - Appellee

vs

ROBERT E. NORTON
Defendant - Appellant

Circuit Court Number
83-CM-1224
Circuit Court of the Tenth
Judicial Circuit of Illinois
Tazewell County, Associate
Division
William H. Young, Trial Judge

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Robert E. Norton, the appellant above named (acting in his own behalf, pro se), hereby appeals to the Supreme Court of the United States from the final decree, entered herein on April 2, 1985, of the Illinois Supreme Court; said decree — in rejecting the "Petition for Appeal As a Matter of Right" submitted by appellant in the above entitled cause — automatically permits the judgment of conviction to stand as affirmed by the decision and order entered Nov. 30, 1984, in the Illinois Third District Appellate Court, Ottawa, General Case No. 3-84-0248.

This appeal is taken pursuant to United States statute 28USC1257 (State Courts: Appeal).

Appellant was convicted of the crime of disorderly conduct, as a result of charges which were brought after the appellant was observed to be standing outside his home completely nude at approximately 9 p.m. on August 28, 1983, those charges specifying violation of Illinois Revised Statutes, Chapter 38, Section 26-1(a)(1); was sentenced to 30 days confinement and to pay a fine of $500; and is presently enlarged on bail in the sum of $2500 (10%).

II. The clerk will please prepare the Illinois Supreme Court record in this cause as will, similarly, the clerk of the Third District Appellate Court, Ottawa, please prepare the record on appeal in this cause in the possession of that court, for transmission to the clerk of the Supreme Court of the United States.

/s/ Robert E. Norton,Appellant *(pro se)*
407 Fairlane, Pekin, Illinois 61554
April 16, 1985

cy: Clerk of the Court, Illinois Appellate Court, Third District, Ottawa 61350
cy: Clerk of the Court, Supreme Court of the United States, Washington, DC 20543.

Case No. _____

SUPREME COURT OF THE UNITED STATES
ANNUAL TERM BEGUN AND HELD OCTOBER 1984

TITLE:
THE PEOPLE OF THE STATE OF ILLINOIS
Plaintiff-Appellee
vs
ROBERT E. NORTON
Defendant-Appellant

On Appeal from the Supreme Court, State of Illinois, Springfield

No. 61248

MOTION TO ACCEPT JURISDICTIONAL STATEMENT FOR FILING INSTANTER

I, Robert E. Norton, appellant (acting *pro se*) in the above entitled Case, hereby respectfully submit a motion that this honorable court give favorable consideration to granting the acceptance for filing instanter, in the Supreme Court of the United States, of the appellant's Jurisdictional Statement (together with which this motion is bound) in connection with the further appeal of this Case.

The short delay in the scheduled filing is due to the fact that the burden of the defendant-appellant's being by considered preference his own counsel *pro se*, and of necessity his performing also all the preparatory clerical work, etc., involved in the appeal, has been greatly heightened due to illness of the appellant for some extended periods at various times since early April, made also more acute in view of a vision problem of the appellant with the close workload causing eye strain unduly, even though corrective glasses are worn.

Robert E. Norton, Appellant
(Acting *pro se*)
Dated: June 29, 1985